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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,991	07/28/2006	Eral Foxenland	9564-16	2108
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EXAMINER				
RAINEY, ROBERT R				
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2629				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/587,991

**Applicant(s)**

FOXENLAND, ERAL

**Examiner**

ROBERT R. RAINEY

**Art Unit**

2629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-22, 24-35 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-22, 24-35, and 37-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 6, 23, and 36 cancelled from claims submitted for this action, leaving claims 1-5, 7-22, 24-35, and 37-40 under consideration.

### ***Response to Arguments***

1. Applicant's arguments filed 3/11/2009 regarding claims 1, 18 and 31 as amended have been fully considered but they are not persuasive.

Applicant argues:

*In sharp contrast to the recitations of independent Claim 1, however, the changes described in paragraph 37 of Kataoka are based on static game scores, not based on events occurring during a game in progress. Thus, Kataoka teaches away from the recitations of independent Claim 1 directed to changing parameters of the user interface whenever the user interface parameters in the game change based on events occurring in the game.*

First: The "static game scores" mentioned are based on events occurring during a game in progress. The "static game score" is achieved during a game in progress. Second: If, by the above, applicant is arguing that the required teaching is to change parameters of the user interface while the game is in progress, this is not a feature recited in the claims.

Examiner offers the following comments in the hope of furthering prosecution. This is not a finding and no response is required. Comments: Examiner has offered rejections related to applicant's disclosed invention. However, the language of the claims is more broad than the rejections, particularly in that the language of the claims does not adequately distinguish

what "user interface" is intended, for example, a game changes its own user interface constantly and it doesn't seem to the examiner that the claim language excludes the interpretation that this is simply a game changing its own interface.

2. Applicant's arguments with respect to claims 2-5, 7-17, 19-22, 24-30, 32-35, and 37-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Note on the Rejections***

The amendments filed 3/11/2006 amended claim 1 to include limitations from previous dependent claim 6. In the previous office action examiner rejected claim 6 by starting with the rejection of claim 3, which depends from claim 2 and providing some additional arguments. The present rejection of claim 1 is the combination of the previously presented rejections for claims 1-3 and 6. In the rejections below, the comments previously provided for claim 6 are placed at the beginning of the rejection of claim 1 and the sections presented in the previous office action are presented as sections labeled according to which claim the limitations are found in.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0216054 to *Mathews et al.* ("*Mathews*") in view of U.S. Patent Application Publication No. 2004/0157654 to *Kataoka et al.* ("*Kataoka*").

**Claims 1-3** are rejected on the grounds and arguments starting at the next paragraph and continuing through the end of the sections labeled "Claim 2" and "Claim 3", referred to collectively as *the base arguments*, with the further explanation that the rejection provided by *the base arguments* already taught the changing of game UI with level and the changing of device UI with game level thus the limitation that the control unit is configured to change parameters of the user interface whenever the user interface parameters in the game change is taught.

*Mathews* discloses a device, comprising: a user interface, a control unit for controlling operations of the device including changeable parameters of the user interface (see for example [0006] and Fig. 1), and a platform for running a generic application (see for example Fig. 4 item 72), wherein the control unit is configured to change parameters of the user interface based on various events (see for example [0010], especially "...steps at the portable communication device of determining if the event has occurred and if the event has an associated skin and theme, and if the associated skin and theme exists, updating the display with the associated skin and theme.", [0025] and Fig. 4).

*Mathews* does not expressly disclose running a game as the generic application nor that it is events occurring in the game upon which the parameter changes are based.

*Kataoka* discloses a game apparatus and in particular: a game platform for running a game on a cellular phone and that, based on events in the game, the user interface may be changed (see for example [0037], especially "The gamers can use the game scores of the mini-game to obtain melodies of incoming calls and wallpaper for portable phones..." and Fig. 4).

*Mathews* and *Kataoka* are analogous art because they are from the same field of endeavor, which is customizable user interfaces for devices.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to improve the device of *Mathews* by adding the capability to run a game as taught by *Kataoka* and to further improve the system by including game events to be among those upon which changes of the user interface are based as taught by *Kataoka*.

One of ordinary skill in the art could have combined the elements as claimed by known methods and in the combination each performs the same function it does separately. *Mathews* still monitors events and changes the UI based on them. *Kataoka* still produces events and allows the UI to be changed based on them. One of ordinary skill in the art would have recognized that the results of the combination were predictable. That is that the UI would be changed based on game events.

**Claim 2:** In addition to the above combination over *Mathews* and *Kataoka*, which covered the limitation that themes with changeable parameters are defined for the user interface, *Kataoka* further discloses that a theme may be associated with a game and used in a portable phone (see for example [0037]; note that in the particular embodiment the game is played on one device and the theme image is sent to a different device).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to improve the device of *Mathews* and *Kataoka* by adding themes associated with the game as some of the changeable themes as suggested by *Kataoka*. The suggestion/motivation would have been to provide advantages such as to provide users with an incentive to play the game (see for example [0039]).

**Claim 3:** In addition to the rejection through the section labeled claim 2 over *Mathews* and *Kataoka*, the sections of *Kataoka* cited teach changing theme parameters for different levels of the game, that is by score, and a particular theme parameter for highest level or certified player and the sections of *Mathews* cited teach changing themes by different times or levels of the day, which are part of the game we are all playing which is life. In addition, examiner takes official notice that it was well known at the time of the invention to provide level recognition to players and to change UI elements based on this recognition by various means such as changing character appearance, sounds, background and adding additional, more complex, or different controls. Therefore providing

for themes in which different parameters of one of the themes are associated with different levels of the game would have been obvious to one of ordinary skill in the art at the time of the invention.

Claims 4 and 5 are rejected on the same grounds and arguments as claim 3.

As to claim 7, in addition to the rejection of claim 1 over *Mathews* and *Kataoka*, *Mathews* and *Kataoka* teach the claimed invention except for the control unit being configured to change parameters of the user interface when the game is interrupted. However, game interruption time would have been one of several obvious times to update the UI, the others being periodically, at the time of particular events, at user initiation. Game interruption time would have been obvious at least because games on small screens customarily use the entire screen and there would be no need to update the device UI until the screen is relinquished by the game. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a control unit configured to change parameters of the user interface when the game is interrupted.

As to claim 8, in addition to the rejection of claim 7 over *Mathews* and *Kataoka*, *Mathews* further discloses that the control unit is configured to change



parameters automatically upon event detection (see for example Fig. 4) making the combination configured to change parameters automatically when a user exits the game.

As to claim 9, in addition to the rejection of claim 7 over *Mathews* and *Kataoka*, *Mathews* further discloses that the control unit is configured to change parameters by a user command (see for example [0021] "...detection of a particular user input...").

As to claim 10, in addition to the rejection of claim 9 over *Mathews* and *Kataoka*, *Mathews* and *Kataoka* disclose the claimed invention except for the control unit being configured to be locked by a user command to stop future changes of the parameters of the user interface.

Examiner takes official notice that enabling and disabling auto-update features by the user was well known in the art at the time of the invention. For example, *Mathews* at [0026] and Fig. 4 item 120 teaches locking out automatic theme download. Thus configuring the control unit to be locked by a user command to stop future changes of the parameters of the user interface would have been obvious to one of ordinary skill in the art at the time of the invention.

As to claim 11, in addition to the rejection of claim 2 over *Mathews* and *Kataoka*, *Kataoka* further discloses that the device is configured to save a

changed user interface theme in a format that may be transmitted with a message to another device (see for example [0038] “The system may also be designed such that wallpaper that authenticates the identity of a certified player is transmitted to the digital portable phone of the certified player.”).

As to claim 12, in addition to the rejection of claim 5 over *Mathews* and *Kataoka*, *Kataoka* further discloses saving scores in a format that may be transmitted to another device (see for example [0011] and [0030]-[0031] in this case the sending device is a server). *Mathews* and *Kataoka* disclose the claimed invention except for the user's device being the one that saves the scores and that the scores are in a format that may be transmitted with a message.

The previously cited teaching in M of the “generic application” clearly suggests that the device is capable of storing information. One of ordinary skill could have implemented the storage in the device by known methods and would have recognized that the result would be predictable. That is that the scores would be stored locally. As to the scores being in a format that may be transmitted with a message, since both text and image transmission was known and both are customarily represented by digital memory sequences and digital memory sequences are the things transmitted as messages the format may be transmitted with a message to another device.

As to claim 13, in addition to the rejection of claim 2 over *Mathews* and *Kataoka*, *Mathews* further discloses that the theme includes a set of picture settings comprising picture parameters such as colour, contrast, light intensity; picture objects; animation effects and bitmap shapes; sound settings comprising sound parameters; sound objects; vibration settings comprising vibration parameters, said theme being associated with operations of the device (see for example [0020]).

As to claim 14, in addition to the rejection of claim 1 over *Mathews* and *Kataoka*, *Mathews* further discloses that the user interface comprises a display for showing information related to the operations of the device by means of a graphical interface of the display (see for example [0030]).

As to claim 15, in addition to the rejection of claim 14 over *Mathews* and *Kataoka*, *Mathews* further discloses that the user interface comprises a sound system (see for example [0003]).

As to claim 16, in addition to the rejection of claim 15 over *Mathews* and *Kataoka*, *Mathews* and *Kataoka* disclose the claimed invention except for the user interface comprising a vibration element.

Examiner takes official notice that both game and cell phone UIs with vibration elements were well known in the art at the time of the invention.

It would have been obvious to include a known feature, vibration, in the UI of *Mathews* and *Kataoka*.

As to claim 17, in addition to the rejection of claim 1 over *Mathews* and *Kataoka*, *Mathews* further discloses that the device is a portable telephone, a pager, a communicator, a smart phone, an electronic organiser, a calculator or a positioning device (see for example [0005] "smartphones").

The following claims are method claims representing methods implicit in the corresponding apparatus claims.

Claim 18 is rejected on the same grounds and arguments as claim 1.

Claim 19 is rejected on the same grounds and arguments as claim 2.

Claim 20 is rejected on the same grounds and arguments as claim 3.

Claim 21 is rejected on the same grounds and arguments as claim 4.

Claim 22 is rejected on the same grounds and arguments as claim 5.

Claim 24 is rejected on the same grounds and arguments as claim 7.

Claim 25 is rejected on the same grounds and arguments as claim 8.

Claim 26 is rejected on the same grounds and arguments as claim 9.

Claim 27 is rejected on the same grounds and arguments as claim 10.

Claim 28 is rejected on the same grounds and arguments as claim 11.

Claim 29 is rejected on the same grounds and arguments as claim 12.

Claim 30 is rejected on the same grounds and arguments as claim 13.

Claims 31-38 are claims to a "game module". The teaching by *Mathews* of the capability to run a "generic application" as cited in the rejection of claim 1 make it clear that such a software implementation of the functions was taught or implicit in the corresponding apparatus rejections.

Claim 31 is rejected on the same grounds and arguments as claim 1.

Claim 32 is rejected on the same grounds and arguments as claim 2.

Claim 33 is rejected on the same grounds and arguments as claim 3.

Claim 34 is rejected on the same grounds and arguments as claim 4.

Claim 35 is rejected on the same grounds and arguments as claim 5.

Claim 37 is rejected on the same grounds and arguments as claim 7.

Claim 38 is rejected on the same grounds and arguments as claim 13.

Claim 39 is a claim to a computer program product loadable in a device and comprising computer readable program code for implementing a game module as defined in claim 31 and is rejected on the same grounds and arguments as claim 31.

As to claim 40, in addition to the rejection of claim 31 over *Mathews* and *Kataoka*, the teaching by *Mathews* of the capability to run a generic application (see for example Fig. 4 item 72) would have fairly implied to one of ordinary skill in the art that such an application would reside on a computer readable medium.

***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ROBERT R. RAINEY** whose telephone number is (571)270-3313. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amare Mengistu can be reached on (571) 272-7674. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RR/

/Amare Mengistu/  
Supervisory Patent Examiner, Art Unit 2629